(13)

No. 05-502

FILED
APR 14 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Writ Of Certiorari To The Utah Supreme Court

REPLY BRIEF FOR PETITIONER

MARK L. SHURTLEFF
Utah Attorney General
KIRK M. TORGENSEN
Chief Deputy Attorney General
J. FREDERIC VOROS, JR.
Chief, Criminal Appeals
JEFFREY S. GRAY*
Assistant Attorney General
Counsel for Petitioner
160 East 300 South, 6th Floor
Post Office Box 140854
Salt Lake City, UT 84114-0854
(801) 366-0180
**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

ARGUMENT 1

I. EMERGENCY AID SHOULD BE JUDGED AGAINST THE TRADITIONAL OBJECTIVE STANDARD APPLIED IN OTHER CASES INVOLVING SAFETY EXIGENCIES 1

A. This Court should not abandon the traditional and straightforward standard of objective reasonableness in favor of the complex and confusing standard adopted by the Utah Supreme Court 2

B. Inquiry into motive is unnecessary because emergency aid is justified and limited by the individual circumstances at the time of entry 5

II. EVOLVING VIOLENCE POSES AN INHERENT RISK OF SERIOUS HARM AND THUS JUSTIFIES IMMEDIATE POLICE INTERVENTION 6

III. THE CIRCUMSTANCES CONFRONTING THE BRIGHAM CITY OFFICERS JUSTIFIED THEIR ENTRY 8

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES

Atwater v. City of Lago Vista, 532 U.S. 318 (2001) 4

Georgia v. Randolph, ___ U.S. ___, 126 S.Ct. 1515 (2006) 6

Ker v. California, 374 U.S. 23 (1963) 9

Maryland v. Buie, 494 U.S. 325 (1990) 1

Michigan v. Long, 463 U.S. 1032 (1983) 1

Mincey v. Arizona, 437 U.S. 385 (1978) 1, 2, 4, 7

New Jersey v. T.L.O., 469 U.S. 325 (1985) 8

New York v. Belton, 453 U.S. 454 (1981) 4

Terry v. Ohio, 392 U.S. 1 (1968) 1, 2, 7

Thornton v. United States, 541 U.S. 615 (2004) 3

United States v. Cortez, 449 U.S. 411 (1981) 8

United States v. Sokolow, 490 U.S. 1 (1989) 8, 11

Wayne v. United States, 318 F.2d 205 (D.C. Cir. 1963) 1, 3

Whren v. United States, 517 U.S. 806 (1996) 5

OTHER AUTHORITY

Webster's Third New International Dictionary 2554 (1993) 7

REPLY BRIEF FOR PETITIONER

ARGUMENT

I.

EMERGENCY AID SHOULD BE JUDGED AGAINST THE TRADITIONAL OBJECTIVE STANDARD APPLIED IN OTHER CASES INVOLVING SAFETY EXIGENCIES

This Court has recognized a number of "safety exigencies" that justify warrantless police action, including weapons frisks, protective automobile searches, and protective sweeps. In each case, the warrantless police intrusion is justified by the need to protect the safety of officers or others and is judged against an objective standard based on the totality of the circumstances, without regard to the officer's subjective motives or intent.[1]

In *Mincey v. Arizona*, 437 U.S. 385 (1978), the Court identified another safety exigency that justifies warrantless police action. The Court recognized that police may enter a home without a warrant "'to protect or preserve life or avoid serious injury,'" otherwise known as rendering "emergency aid." *Id.* at 392-93 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)).

Like other safety exigencies, emergency aid should be judged against an objective standard: the facts, and rational inferences from those facts, must warrant a

---

[1] *See Terry v. Ohio*, 392 U.S. 1, 27 (1968) (holding that "the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety or that of others was in danger"); *Michigan v. Long*, 463 U.S. 1032, 1050 (1983) (same); *Maryland v. Buie*, 494 U.S. 325, 336 (1990) (holding that sweep must be "justified by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene").

"reasonably prudent [person] in the belief that [the] safety . . . of others [is] in danger," *Terry*, 392 U.S. at 27, and that prompt action is necessary to "'protect or preserve life or [prevent] serious injury,'" *Mincey*, 437 U.S. at 392-93 (citation omitted). As in other Fourth Amendment contexts, the officer's conduct must also be "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968).[2]

A. This Court should not abandon the traditional and straightforward standard of objective reasonableness in favor of the complex and confusing standard adopted by the Utah Supreme Court.

Respondents and their amicus, National Association of Criminal Defense Lawyers (NACDL), ask this Court to abandon the objective standard that this Court has traditionally applied in cases involving safety exigencies. They urge the Court to instead adopt Utah's bifurcated test, which requires the trial court to first identify and measure the motives that prompted police action, and then apply one of two different tests depending on that finding. *See* Resp. Brf. 3-8; NACDL Brf. 6-17. The Court should reject this confusing and radical approach to Fourth Amendment jurisprudence.

As explained in the City's opening brief, Pet. Brf. 15-16, determining the motivations of one or more officers is a

---

[2] The record does not suggest, and respondents have never argued, that the officers entered areas outside the kitchen and dining room until after the occupants were arrested.

challenging and unrealistic task for courts. But worse, the bifurcated test is confusing and impractical for officers in the field. Where the "law enforcement" and "caretaking" functions of police possibly or necessarily converge, officers cannot be expected to identify and separate, "under pressure and in minutes," their motives for acting and then apply the appropriate test. *Wayne*, 318 F.2d at 212. "[O]fficers should not have to make [such] fine judgments in the heat of the moment." *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in the judgment).

Circumstances often dictate that officers serve as both caretakers and peacekeepers, as in this case.[3] Accordingly, attempting to neatly separate those roles in a post hoc suppression hearing, or insisting that officers pick a role before they act, is impractical and, as acknowledged by the Utah Supreme Court itself, "artificial." Pet. App. 16.

The need for emergency aid may or may not arise in the course of an officer's criminal law enforcement activities. Emergency aid may be justified in contexts wholly

---

[3] The record reveals that Officer Jeff Johnson acted in his capacity as both a law enforcement officer and as a caretaker. Contrary to assertions made by respondents and their amicus, Officer Johnson repeatedly testified that he entered to prevent further harm and to otherwise render assistance to the adult assault victim. *See* J.A. 41 (testifying that he handcuffed the juvenile "[i]n an effort to save anybody else from getting punched"), 43 (testifying that they "were not trying to be intrusive as much as trying to prevent somebody from getting hurt"), 69 (testifying that he "entered the home because people were being hurt"), 73, 79 (testifying that he asked the adult assault victim "if he was okay and if he needed any help"). Officer Johnson also acknowledged that once in the home, having handcuffed the juvenile assailant, he did not comply with the adults' demand to leave because people were "going to be taken into custody for the assault." J.A. 73.

divorced from criminal enforcement, as when officers enter to render medical assistance to a heart attack victim. On the other hand, emergency aid may be justified in the course of a criminal investigation, as when officers respond to a shooting. *See Mincey*, 437 U.S. at 392 (recognizing that "when the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises"). Sometimes, the line is unclear, as when officers respond to an emergency and there is some suspicion of foul play, e.g., attempted suicide or homicide.

Given the varied and often ambiguous circumstances in which such safety exigencies arise, an officer's actions should be judged against, and guided by, a nontechnical, "straightforward rule" that can be "easily applied, and predictably enforced." *New York v. Belton*, 453 U.S. 454, 459 (1981). As recently observed by this Court, "the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made." *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). The traditional objective standard applied by the Court in other cases involving safety exigencies provides that standard. It reflects both the realities faced by the officer in the field and the government's substantial interest in protecting others from harm.

B. Inquiry into motive is unnecessary because emergency aid is justified and limited by the individual circumstances at the time of entry.

Respondents and their amicus contend that scrutiny of an officer's motives in emergency aid cases is necessary to appropriately limit officer discretion and prevent pretextual searches. Resp. Brf. 4, 6-7, 11; NACDL Brf. 7-17, 25-26. NACDL reasons that emergency aid intrusions should be subject to the same purpose inquiry made in "special needs" cases because, like special needs searches, emergency aid intrusions serve non-law enforcement interests and do not require individualized suspicion of criminal wrongdoing. NACDL Brf. 8-15. These similarities do not justify an inquiry into purpose in emergency aid entries.

Special needs searches are programmatic measures that address remote safety risks and require no individualized suspicion. In contrast, emergency aid entries are responsive measures that address imminent safety risks and require individualized suspicion of danger. Therefore, unlike special needs searches, emergency aid entries are both objectively justified and limited by the facts and circumstances occurring at the time of entry. The requirement of individualized suspicion of danger "ensure[s] that police discretion is sufficiently constrained." *Whren v. United States*, 517 U.S. 806, 817-18 (1996) (quotation marks and citations omitted). No such safeguard exists in the case of the suspicionless special needs search; hence the need for an inquiry into programmatic purpose.

NACDL contends that only a suspicion of "criminal wrongdoing" obviates the need for inquiry into purpose. This argument lacks merit. It is not the nature or object of the suspicion that obviates the need for such an inquiry, but the requirement that the suspicion be grounded in the

facts and circumstances confronting the officer, viewed objectively. *See generally*, Brief for the United States as Amicus Curiae Supporting Petitioner (U.S. Brf.) 15-21. This Court has not examined the underlying purpose of a search unless no such safeguard exists. *See generally*, Pet. Brf. 16-20. It should not do so now.

II.

EVOLVING VIOLENCE POSES AN INHERENT RISK OF SERIOUS HARM AND THUS JUSTIFIES IMMEDIATE POLICE INTERVENTION

Last month, this Court recognized in *dicta* that police may enter a home where they have "good reason to believe" that a threat of violence exists. *Georgia v. Randolph*, ___ U.S. ___, 126 U.S. 1515, 1525 (2006). Continuing, the Court opined that "it would be silly to suggest that the police would [act unlawfully] by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur. . . ." *Id.* Yet, that is precisely what respondents and their amicus suggest.

Implicit in *Randolph's* recognition that officers may intervene to prevent violence is the understanding that violence poses an inherent risk of serious harm. This Court should therefore hold that absent rare circumstances indicating otherwise, e.g., a boxing match, officers may intervene when they have reason to believe violence is ongoing or imminent.

* * *

Respondents and their amicus complain that such a holding would create an inappropriate bright line rule. Resp. Brf. 11; NACDL Brf. 19-22. But permitting warrantless intervention where the facts support a reasonable

belief that violence is ongoing or imminent is no more a bright line rule than permitting a weapons frisk where the facts support a reasonable belief that a suspect is armed and dangerous. *See Terry*, 392 U.S. at 23-30. What the City proposes is not a bright line rule, but a workable standard.

Respondents and their amicus argue that police should be required to monitor the violence and act only after serious injury has been inflicted or when it becomes evident that it will be inflicted. Such a rule ignores the inherent risks and ambiguities associated with violence.

Violence carries with it the inherent risk of serious harm.[4] Moreover, it is unpredictable, evolving, and volatile. A simple assault may in an instant escalate into an aggravated assault or even a homicide. Police cannot know what blow will result in a broken jaw, dangerous eye injury, or ruptured spleen. Nor can they predict with any accuracy when a combatant will employ a nearby or hidden weapon.

In the face of such volatility, police officers cannot be expected to remain at "the porch steps until it is too late to prevent the very injury . . . [they] are entitled to prevent." Pet. App. 31 (Durrant, J., dissenting in part). Emergency aid encompasses more than entry to administer medical assistance for serious injuries already suffered. It also encompasses entry to "*avoid* serious injury." *Mincey*, 437 U.S. at 392-93 (citation omitted) (emphasis added).

---

[4] Violence is defined as the "exertion of any physical force so as to injure or abuse." Webster's Third New International Dictionary 2554 (1993).

NACDL concedes that the violence justified the officers in "monitor[ing] the situation from their prime vantage point" within the curtilage of the home. NACDL Brf. 25. This concession acknowledges the unpredictable and volatile nature of violence, but naively assumes a calibrated clairvoyance that no officer enjoys. Officers cannot be expected to remain at the porch steps until they know serious injury will result. This Court has never required certainty before permitting officers to act. *New Jersey v. T.L.O.*, 469 U.S. 325, 346 (1985). The reasonable belief standard deals instead with "probabilities" – those "'common-sense conclusions about human behavior'" formulated by "'practical people.'" *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Absent unusual circumstances that indicate the violence is not likely to result in serious injury, police should be able to act.

III.

THE CIRCUMSTANCES CONFRONTING THE BRIGHAM CITY OFFICERS JUSTIFIED THEIR ENTRY

Respondents and their amicus attempt to downplay the violence witnessed by the Brigham City officers. But the trial court's findings, the record that supports those findings, and the Utah Supreme Court's summary of the facts, belie that attempt.[5]

---

[5] NACDL contends that this Court should not consider other undisputed record facts, such as the likely presence of weapons in the kitchen, that were not considered by the Utah Supreme Court, and improperly characterizes the trial court's findings of fact, prepared by the prosecution, as "stipulated record facts." NACDL Brf. 17-19, 24 &

(Continued on following page)

The trial court found that "through [back] windows and a screen door," the Brigham City officers watched "an altercation taking place, wherein it appeared that four adults were trying to control a juvenile." Pet. App. 47. At the suppression hearing, Officer Johnson explained that the adults "had ahold of [the juvenile's] wrists" and "were trying to press him into some type of control against [the] refrigerator" in the kitchen. J.A. 39, 58. He testified that the juvenile's hands "were doubled into fists" and that he was "twisting and turning and writhing" in an effort to break free. J.A. 39, 58.

The trial court further found that the altercation was "loud" and "tumultuous." Pet. App. 47. Officer Johnson explained that the adults were yelling at the juvenile to "calm down," that "obscenities [were] flying," and that "threats were being exchanged." J.A. 71-72. He further testified that he could hear the commotion from the street. J.A. 26, 28. The trial court found that it was so loud and tumultuous that "the occupants probably would not have heard" a knock at the door. Pet. App. 47. Officer Johnson testified that when he later opened the screen door and

---

n.6. But as noted in the City's opening brief, Pet. Brf. 2 n.1, this Court examines the entire record in determining constitutional rights. *See Ker v. California*, 374 U.S. 23, 34 (1963). Although language in the Utah Supreme Court's opinion suggested that it would not consider some facts not included in the written findings, the Utah court did so, acknowledging that because "[s]earch and seizure cases are 'highly fact dependent,' . . . the trial court's factual findings are supplemented with relevant, objective facts gleaned from testimony given during the evidentiary hearing" on the motion to suppress. Pet. App. 2 n.1. Even if this Court refused to consider Officer Johnson's testimony that kitchens are especially dangerous places because of the presence of knives, the Court could certainly take judicial notice of that fact.

shouted "police," "[i]t was so loud, it was so tumultuous, that nobody heard a word." J.A. 40.

The trial court found that "[a]t one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose." Pet. App. 47; *accord* Pet. App. 2 (Utah Supreme Court observing that "the juvenile swung a fist and struck one of the adults in the face"). Officer Johnson testified that from outside the screen door, he saw the juvenile "get one of his hands free" and "sw[i]ng his fist and land[] a punch on the nose and mouth area" of one of the adult males. J.A. 40. He testified that the punch landed "squarely on the [adult's] face, enough to draw blood." J.A. 59.

Following the punch, Officer Johnson pulled open the screen door and shouted to identify himself. J.A. 40; *accord* Pet. App. 2 (Utah Supreme Court observing that the officers "then opened the screen door and 'hollered' to identify themselves"). Officer Johnson testified that a "flurry of activity" also ensued after the punch, as the adults forced the juvenile "against the refrigerator so hard that the refrigerator was actually walking." J.A. 40, 60. It was so loud that none of the occupants heard Officer Johnson's announcement. J.A. 40; *accord* Pet. App. 2 (recognizing that "no one heard" the officers' announcement following the punch).

Officer Johnson testified that after his first attempt to gain the occupants' attention failed, he "stepped into the home" and again yelled "as loud as he could." J.A. 41; *accord* Pet. App. 2 (Utah Supreme Court observing that the officers "entered the kitchen" and one of them "again shouted to identify and call attention to himself"). Officer Johnson testified that at that point, the occupants began

to realize that the police were there and "[o]ne by one, as they became aware," the fight "dissipated." J.A. 41, 62. Officer Johnson testified that he then stepped between the combatants and handcuffed the juvenile to "save anybody else from getting punched." J.A. 41.

In sum, the scene that played out before the officers was not the trivial and innocuous situation described by respondents and their amicus. The altercation was violent and uncontrolled, the combatants were spewing out threats and obscenities, and the fight had escalated with the punch. In addition, the possible domestic nature of the fight, coupled with the fight's location in a kitchen, where knives are commonly found, only served to amplify the already reasonable belief that the fight may result in serious injury absent immediate intervention.[6]

Thus, contrary to the claim of respondents' amicus, the fight was indeed the "kind of situation that was so volatile" and "out of control" that immediate intervention was reasonable. NACDL Brf. 25. As observed by the Utah Supreme Court, "[i]t was the acknowledged presence of the authority of the police that quenched the heat in the

---

[6] Respondents' amicus argues that this Court should not consider the possible domestic nature of the altercation, relying on the Utah Supreme Court's conclusion that such a consideration is inappropriate where no finding was made that the combatants were cohabitants. *See* Pet. App. 25. This misapprehends the nature of the "reasonable belief" inquiry. As noted by this Court in *Sokolow*, "'[t]he process does not deal with hard certainties, but with probabilities.'" 490 U.S. at 8 (citation omitted). The Utah Supreme Court acknowledged that "any altercation taking place within a home may result in a reasonable belief that the participants are cohabitants committing domestic violence." Pet. App. 22 n.7.

kitchen." Pet. App. 18. The officers would have been derelict in their duty had they not acted to stop the violence.

CONCLUSION

For the reasons stated above and in the City's opening brief, this Court should reverse the decision of the Utah Supreme Court.

Respectfully submitted,

MARK L. SHURTLEFF
Utah Attorney General
KIRK M. TORGENSEN
Chief Deputy Attorney General
J. FREDERIC VOROS, JR.
Chief, Criminal Appeals Division
JEFFREY S. GRAY*
Assistant Attorney General
Counsel for Petitioner
160 East 300 South, 6th Floor
Post Office Box 140854
Salt Lake City, UT 84114-0854
(801) 366-0180
**Counsel of Record*